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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,629	01/14/2004	Mark James Kline	8194C	4664

27752 7590 05/03/2005

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,629

Applicant(s)

KLINE ET AL.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

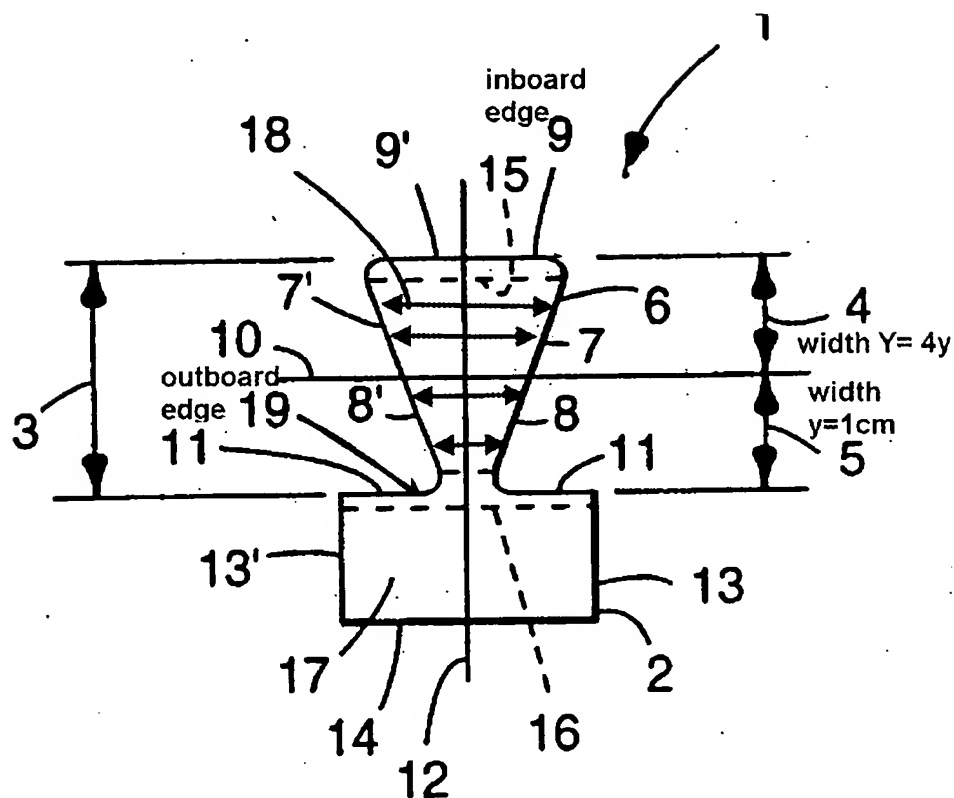
### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-9 rejected under 35 U.S.C. 102(b) as being anticipated by Rossini et al. (US 5,312,387). Regarding claims 1-2 and 9 Rossini et al. discloses a diaper fastening tab 1 having a bond end 2 joined to article side edge and a free end 3 with a fastening surface 18, the fastening tab 1 having an effective dimension Y extending parallel to a longitudinal axis, the effective dimension Y increasing from a laterally outboard edge 19 to a laterally inboard edge 9 of the first surface, wherein the surface fastening system has peel maximum/different levels of resistance to disengagement at the distal half 4 of free end 3 (col. 2, ll. 31-39, 43-47, col. 4, ll. 1-8 and figure 1).



# FIG. 1

Regarding claims 3-4 Rossini et al. discloses a fastening element with a longitudinally inboard edge 9 longer than longitudinally outboard edge 19 (fig. 1).

Regarding claim 5 Rossini et al. discloses inboard edge 9 having free end 3 being unjoined from the article (col. 2, ll. 43-45 and fig. 1).

Regarding claims 6-7 Rossini et al. discloses the tab free ends provide improved peel force resistance, minimizing the potential for inadvertent fastening tab removal (col. 4, ll. 9-14). Rossini et al. further discloses examples where the peak load in a direction other than the direction of primary load bearing to be 940-1405 gm with a 90 degree peel (col. 4, table I and col. 5, table II).

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Regarding claim 8 Rossini et al. discloses an article with a Y-increasing fastening system dimension to be used on a diaper, said diaper would inherently contain an absorbent member chassis for absorbing body exudates. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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2. Claim 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Rossini et al. (US 5,312,387). Rossini et al. discloses a fastening surface 18 will adhere/attach to a suitable surface on the front or frontal portion of the diaper/pant-like article (col. 2, ll. 37-40). Rossini et al. does not expressly disclose the fastening elements form a waist opening and a pair of leg openings. It would be obvious to one of ordinary skill in the art at the time the invention was made the Rossini et al. diaper contain first and second fastening elements that attach to form a waist opening and a pair of leg openings since it is well known that diapers contain a waist opening, leg openings, and a means of attaching the article to the wearer.

### ***Response to Arguments***

3. Applicant's arguments, see page 4, lines 13-14, filed 23 March 2005, with respect to the rejection(s) of claim(s) 1 and 8-10 under 35 U.S.C. 102(b) as being anticipated by Scripps (US 4,846,815) and under 35 U.S.C. 103(a) over Scripps have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rossini et al. (US 5,312,387).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Seth reference, U.S. patent no. 5,603,708 is cited for showing a rounded corner fastening diaper tab with different levels of resistance to disengagement. The Ribich reference, U.S. patent no. 3,708,833 is cited for showing a fastening system with primary direction of loading, an effective dimension, Y, extending

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substantially parallel to a longitudinal axis of the article and different levels of resistance to disengagements in different directions. The Robles et al. reference, U.S. patent no. 5,899,895 is cited for showing a thigh and waste panel on a diaper that extend in multiple directions.

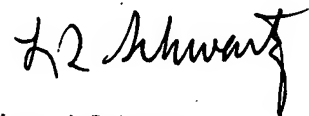
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura Hill whose telephone number is 703-305-0850. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20050428

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